Congressman EDWARD A. GARMATZ, Democrat, Maryland.

Congressman ALVIN F. WEICHEL, Republican, Ohio.

Ex-officio Members:

Senator E. C. JOHNSON, Democrat, Colorado (chairman, Senate Committee on Interstate and Foreign Commerce).

Congressman EDWARD J. HART, Democrat, New Jersey (chairman, House Committee on Merchant Marine and Fisheries).

Congressman LEONARD W. HALL, of the Second Congressional District of New York, attended the meeting also, by invitation of the Board.

The Board assembled at Wiley Hall, Kings Point, at 1000 Monday, April 21, 1952, where they were welcomed by the Superintendent of the United States Merchant Marine Academy, Rear Adm. Gordon McLintock, and his staff.

The following members of the Board were present: Senator RUSSELL LONG, Democrat, of Louisiana; Congressman EUGENE J. KEOGH, Democrat, of New York; Congressman HENRY J. LATHAM, Republican, of New York. Congressman LEONARD W. HALL, Republican, of New York, was also present.

The following officials of the United States Maritime Service Headquarters and the United States Merchant Marine Cadet Corps headquarters were present: Rear Adm. H. J. Tiedemann, Chief, Office of Maritime Training and Commandant, United States Maritime Service; Capt. J. T. Everett, Supervisor, United States Merchant Marine Cadet Corps; Commander C. R. Shorter, Chief Liaison Officer, Office of Maritime Training.

FIRST MEETING OF THE BOARD

The Board elected Senator LONG to serve as permanent chairman and confirmed the appointments of Commander C. W. Sandberg and Lt. J. A. Walsh as secretary and assistant secretary respectively.

Department heads and administrative personnel were presented to the Board after which the Superintendent presented his report. Following discussion of the report Cadet-Midshipman William G. Rendall, of New York, regimental commander, and Cadet-Midshipman Marion G. Folsom, of California, regimental adjutant, invited the Board to lunch with the regiment of cadet-midshipmen in Delano Hall. Recess was taken at 1200.

TOUR OF QUARTERS AND GROUNDS

After lunch, individual tours of inspection of the academy grounds and facilities were conducted. The Board also attended the formal Regimental Review.

SECOND MEETING OF THE BOARD

The Board sat in executive session during the second and final meeting. The general comments and specific recommendations of the Board arrived at during this executive session are herewith presented for the serious consideration of the Members of the Senate and House of Representatives:

GENERAL COMMENTS

The Board is in agreement that the Merchant Marine Academy fulfills in every sense possible the basic Merchant Marine policy of the Nation, as outlined in the President's message delivered to the Congress on January 21, 1952. Members of the Board observed the highest degree of patriotism, spirit, and morale among the young men training at Kings Point. The curriculum appears to be on a par with West Point and Annapolis, as well as in keeping with the highest standards of collegiate education. In some respects the training of deck and engineering officers is even more intensive than that at Annapolis, due to the concentration for 2 years on either deck or engineering training at the election of the cadets. It was also noted that the requirement of 1 year at sea results in young men who graduate from this Academy being well qualified to stand a deck or engine room watch immediately upon graduation.

The Board noted with admiration the extensive facilities for training of cadets in the field of engineering and electronics. This equipment, running into value perhaps of millions of dollars, was acquired for the most part at no expense to the Government. Much of it was acquired by gift or by repairing discarded equipment.

The Board was impressed by the efficiency of the institution and the economical operation of the Kings Point Academy. Nevertheless, members of the Board gained the impression that the reductions of appropriations, especially those now recommended by the House of Representatives in H. R. 7072, have now gone beyond any point of reasonable economy and could hardly achieve any result other than progressively closing the institution. Already economies have been forced upon the institution which are unreasonable. A few examples might be cited:

Young men in the first class on alternate days must wait tables.

This means a loss of approximately 4 hours per day and the requirements of classes must be so arranged in order that the cadet-midshipman of the first year may be available on the hour prior to the serving of meals.

In serving meals, white mess jackets for the waiters and table cloths have been discarded to reduce expenses.

All cadet quarters are equipped with overhead lights, yet by regulation midshipmen are forbidden to have more than one light bulb in each room to be used only in a desk lamp in order to save approximately $1,000 per year.

The grounds include a structure that was once a beautiful home, available to cadet-midshipmen for recreation and entertainment of visitors. Such facilities no longer exist because measures of economy deny funds to heat or light the building.

The electronics laboratory is well equipped; yet in order to observe electronics scope of radar, loran, and other electronics equipment, it is necessary to close off light and air. Under such conditions the classroom is unbearably hot due to the heat generated by the equipment. Even in the empty room in the month of April, it is not too difficult to imagine the intense heat of that same room filled with midshipmen during a summer month. Of course, no funds are available for air-conditioning or even adequate draft ventilation.

The maintenance of the lawn appears to be a matter of extra-duty work assigned to first-year cadets.

Likewise, it is noted that Kings Point has a good band for formal occasions, composed of midshipmen who somehow find time to practice.

The curriculum at Kings Point is much heavier in class hours than almost any collegiate institution in the country, and it is noted that cadets practice marching and drilling on Saturdays and at hours during the week which might otherwise be available for recreation.

The institution in some respects gave the impression of being in the last death throes of a so-called economy attack. Appropriations for this Academy have been steadily reduced for the past 4 fiscal years. The number of midshipmen has steadily increased in comparison to the number of staff allowed. In 1946 there was one staff member for every 1.8 midshipmen. At present there is one staff member to 2.7 midshipmen. A similar Federal academy enjoys the ratio of 1 staff to 1.4 cadets, and other Federal academies operate under even more favorable ratios. Despite continual rise in cost, the

lished in the Washington Post, April 16, 1952.

Article entitled "Voice of the Airline 'Consumers,'" describing the work of Col. Joseph P. Adams, of the Civil Aeronautics Board, written by William V. Shannon, and printed in the New York Post, May 3, 1952.

Article entitled "How Long Will Flood Waste Be Tolerated?" written by Lane Kirkland, and published in the AFL News-Reporter, April 30, 1952.

Article entitled "Progress of Kashmir Demilitarization: Dr. Graham Reports Improved Situation," published in the May 1952 issue of the United Nations Bulletin.

FAR-EASTERN PROBLEMS—ADDRESS BY HON. JOHN FOSTER DULLES

Mr. SMITH of New Jersey. Mr. President, on May 5, 1952, in Paris, John Foster Dulles, whom we all know, made a very important address before the French National Political Science Institute on the subject, Far-Eastern Problems. The address has been very widely commented on by the press of both Europe and America. Because of its importance, I ask unanimous consent that it be printed in the body of the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

I

Any discussion of far-eastern problems can well start with Japan. Japan is the only great industrial power of Asia and has a unique capacity for good or evil. She can contribute mightily to the development of the underdeveloped area of Asia. But also she could contribute to the Soviet Communist program of world conquest because of her potential ability to produce modern types of precision weapons and because the Japanese people have historically been susceptible to militarism. Stalin has said that with Japan the Soviet Union would be "invincible."

If Soviet communism could, without precipitating general war, get control of Japan, that would involve such a shift in the balance of power in the Far East that the Soviet leaders might then be prepared, without further delay, to risk a general war. Without that, the industrial balance is so strongly against Soviet Russia that it would be reckless for its leaders to precipitate a general war at this time.

The free world needs Japan, just as Japan needs the free world, so that Japan will not again be exploited and ruined to serve the evil purposes of a few imperialists. That is basic to any free-world program for peace.

The Japanese Peace Treaty and the United States security treaties with Japan, Australia, New Zealand, and the Philippines go a long way toward establishing a Pacific Ocean security system and Japan has now freely joined that system as a sovereign equal, by the overwhelming choice of her people.

The Soviet Union attempted desperately to prevent the consummation of peace with Japan on terms which would bring Japan into relations of collective security with the United States. Happily the Soviet Union does not occupy any substantial parts of Japan. It has, however, economic attractions to offer Japan. The Japanese face a difficult problem of survival without access to the raw materials and markets of the Communist-controlled mainland.

During the course of our peace negotiations the Communist Party in Japan openly threatened that, if a so-called separate peace was negotiated, Japan would be invaded from Sakhalin and the Kurile and Habomai Islands, where Soviet forces are within 2 miles of Hokkaido, the main northern island of Japan; and also the Communist Party threatened the use, in this connection, of the large body of indoctrinated Japanese troops which had surrendered to the Soviet Union and which, in violation of the surrender terms, the Soviet Union had retained for its own political purposes.

In addition to threats, there were promises. Cheap raw materials and vast markets were offered. For example, coal was offered at one-third the price which Japan now has to pay for coal transported over long ocean routes.

When we went to San Francisco to consummate the Japanese Peace Treaty in the face of the menacing presence of a high-powered Soviet delegation, we felt that there was risk that the Soviet Union and Communist China would use our action as a pretext for open violence. But the free world allies and the Japanese Government did not hesitate. We all knew that if we faltered in our purpose because of Soviet threats or Soviet promises, our irresolution would lead surely to Soviet domination of Japan and all of Asia and, in the end, produce an increased risk of war under conditions much more disadvantageous than now. So, we persisted and a great step was taken for peace.

There are still many problems ahead for Japan, and the other free nations will have to take account of her economic necessities. But we have at least safely passed a major point of peril which a year ago caused us grave concern.

II

If the Soviet leaders cannot by strategems win control of Japan, then the danger of open war will have receded. We shall, however, still have to cope with the Soviet long-term program of encirclement. We should always remember that Soviet Communist doctrine has never taught a primary reliance upon open war against the west until the west has been so encircled and weakened that its plight would be desperate. Then, Stalin has said, the west might well abandon a hopeless struggle and surrender to Communist rule.

In this program of encirclement Asia has always loomed large. Asia, Stalin has said, is "the road to victory in the West" and Soviet foreign policy has always pursued an "Asia first" policy. It had, and grasped, an unexpected opportunity to pick up important gains in central Europe as a result of World War II. But basically the Soviet program looks to Asia as the area of greatest returns at the present time. The people of Asia, they calculate, can be more readily "amalgamated"—which is Stalin's word—into the Soviet orbit than the peoples of Western Europe. Asians do not have the same deeply rooted traditions of personal and political liberty and the ghost of the old colonialism frightens the Asian people from the kind of association with the west which is needed for economic and military strength. The tide of communism has already engulfed about 500,000,000 Asian people and the waves of communism beat ominously against many others.

That long-range threat, of vast scope, is one that the free world must not ignore.

III

France and the United States, through hard experience—you in Indochina and we in Korea—have come to know well the danger of militant communism in Asia. You are carrying the principal burden of helping the associated states of Indochina to maintain their independence. You have thus assumed a heavy burden, in lives and in money. I am glad that the United States is now helping substantially. I should personally be glad to see us do more, for you have really been left too much alone to discharge a task which is vital to us all.

Indochina is the key to southeast Asia upon the resources of which Japan is largely dependent. Its losses to communism would gravely endanger other areas and it is thus a matter of general concern.

For a time the fighting in Vietnam was widely misinterpreted as being an effort by a colonial power to maintain its rule as against the will of patriots to win their freedom. That misinterpretation is now being dispelled as a result of the wise action that your Government has taken and continues to take to accord sovereign and independent status to the three associated states within the framework of the French union. It happily fell to my lot to make the decision that the three associated states of Vietnam, Laos, and Cambodia would be invited to sign the Japanese Peace Treaty as independent sovereign states. This first introduction of these nations into the free world community has, I believe, helped to present in its true light the struggle which there takes place. Alien despotism is there fighting in the name of liberation, to impose a servitude, which would be a step toward further conquest.

IV

It seems to me that France and the United States, as two free nations which have had to come to close grips with Communist armed aggression, should be doing some hard thinking about how to meet in Asia this all-pervading and ominous threat of Communist aggression.

I suggest that we might consider whether open military aggression by Red armies could not best be prevented by the readiness to take retaliatory action, rather than by attempts to meet the aggression on the spot where it occurs. It is not possible to create, through the vast Asian sector of the frontier of freedom, the kind of local defense which is being created here in Western Europe. The cost of that would be prohibitive. So long as Soviet and Chinese Communist leaders can pick the time, place, and method of aggression, anywhere in Asia, and so long as we only rush ground troops to meet it at the time they select, at the place they select, and with the weapons they select, we are at a disadvantage which can be fatal.

On the other hand, the free world possesses, particularly in sea and air power, the capacity to hit an aggressor where it hurts, at times and places of our choosing. If a potential aggressor knew in advance that his aggression would bring that answer, then I am convinced that he would not commit aggression.

This doctrine of peace by deterrent power I have preached in Japan. I there pointed out that Japan's security arrangements with the United States would mean that if there were open armed attack on Japan, the United States would strike back with overwhelming power. Siberia and much of China, notably Manchuria, are vulnerable from the standpoint of transport and communication. There are ports and lines of communication which, if destroyed, would paralyze Soviet strength in Asia. And, of course, every despotic police state, being dependent upon highly centralized controls, is vulnerable to the disruption of its system of communication.

Is it not time that the Chinese Communists knew that, if, for example, they sent their Red armies openly into Vietnam, we will not be content merely to try to meet their armed forces at the point they select for their aggression, but by retaliatory action of our own fashioning?

I believe indeed that the possibility that this retaliation might happen is what has, in fact, already been deterring the Soviet and Chinese Communists from more open armed aggression in Asia today. But would it not be better if that deterrent influence were openly and unashamedly organized on behalf of the community of free nations? That could be done within the framework of the UN Charter and perhaps with the help of such agencies as the Peace Observation Commission. If it were done that way, it would, on the one hand, impress more strongly the potential aggressors and, on the other hand, give reassurance that no single free world nation would recklessly take action which might have grave consequences for many.

France has shown a leadership in inventing new political measures to safeguard, in peace, the Western Continent of Europe. The whole world is deeply in your debt for conceiving and consummating what we know as the Schuman plan, which unifies the coal and the steel which in the past forged the competing weapons of Franco-German wars. Through the Pleven plan for a European defense community you are laying the basis for a European army which will owe its allegiance to something higher and broader than competing national policies. I appeal to you to use your capacity for original political thinking to help to devise new ways whereby, at bearable cost and minimum risk, the frontier of freedom can be held throughout its entire length.

V

Even when we deter Soviet or Chinese Communists from open invasion with their Red armies, there will still remain the problem of dealing with local revolts which may be stimulated and secretly aided from without. Today that problem is greatly aggravated by the political influence exerted by the vast military power of the Soviet Union, now coupled with that of Communist China, poised at a central area where it could strike with massive force at any point along the 20,000-mile frontier of freedom. That menace intimidates the exposed governments; it enables local Communist parties to capitalize on mass fear and it encourages insurgents to fight on in the hope that powerful military strength will shortly be at their side. Once that external menace is neutralized by a known will and capacity to retaliate, then the internal revolutionary problem will become more manageable. That has been demonstrated in Japan and the Philippines, and I believe that, under the conditions described, it can also be demonstrated in Indochina, so as to bring that affair to an acceptable end.

VI

In dealing with the Communist menace in Asia, the greatest handicap is the Asian fear of western colonialism. That fear drives a wedge of disunity which endangers both parts of the free world. The people of Asia, justly proud of their rich and ancient cultures and newly won political independence, fear that cooperation with the west will subject them again to political or economic dependence on the West and require them to submit to offensive western arrogance. Communist propaganda is devoting itself to arousing these fears by misrepresentation of western motives and the fabrication of stories of western misconduct in relation with nonwhite peoples.

Each of the western powers has a special duty to conduct itself so as to give the lie to this Communist propaganda and so as to lay once and for all the ghost of western colonialism.

The United States faces a difficult test in Japan where our Armed Forces, having come there as conquerors and rulers over a defeated oriental people, now stay on at the invitation of a sovereign Japanese Government, with a duty to cooperate as with equals. All of Asia is watching to see what will happen there. Also, they look to see what happens in Indochina as between the French Nation and the associated states of Indochina. Also they even look at [illegible] Africa.

Both of our countries carry a heavy responsibility. I am confident that we shall discharge it. Our past conduct bears dramatically our desire to promote national independence among all peoples capable of self-government. The United States has shown that in the Philippines. You have shown it in Indochina and elsewhere. The United Kingdom has, of course, shown it on a vast scale.

The people of the west believe basically in the equal rights and equal dignity of all men and in the sacredness of the individual personality of all. That faith had its beginning in Judea, where east and west met, and it held that all men, without regard to race and color, were the creation and concern of a universal God. That western belief in the nature of man is what has made western colonialism from the beginning a self-liquidating affair. The political independence and new dignity that other races have won in recent years is not a frustration of western goals, but their fulfillment. Surely, we can find ways to make that clear and, in so doing, create, between the free east and the free west, a sense of common destiny.

I should like above all to emphasize that this "common destiny" is not a mere high-sounding phrase, but a reality. Against the Soviet Communist type of global strategy no small part of the free world can be made impregnable without regard to the fate of the rest. Already one-third of the world is dominated by an imperialistic brand of communism and one-third of the manpower and natural resources of the world are being consolidated and exploited for an avowed program of world conquest to be achieved by the close encirclement and ultimate strangulation of the West. Already the free world has been so shrunk that no further substantial parts of it can be lost without danger to the whole that remains.

There are a few in the United States who think that the United States alone can be made impregnable. That is so false a conception that I am confident that, whatever the outcome of our forthcoming Presidential elections, United States foreign policy will not reflect that ostrich attitude.

There are also some in Western Europe who seem to think that it can be made impregnable, apart from Asia, and that the Near, Middle and Far East are expendable. I suggest that they may be as foolish as those Americans whom they condemn for believing that the United States can be made impregnable without regard to what happens in Europe.

Of course, our own home is centered what is dearest to us and it is natural and inevitable that each should think first of preserving his own home and countryside. Surely, however, we have now learned that those who seek this in isolation are, in fact, conniving at an aggression which, in the end, will strike them down.

Many feel that we must gamble on partial defense because they are appalled by what they imagine would be the cost of defending the whole. That is why we must think more in terms of defense through deterrent power, whereby many can be defended at the same price as one.

If we care enough, if we are resourceful enough and brave enough, we can guard, in peace, the entire frontier of freedom. Under the cover of that shield the free peoples can, through their conduct and example, make so apparent the advantages of freedom that the despots will gradually loosen their grip on the captive peoples and the present tide of despotism will recede. That will be the ultimate victory, and it is within our power to win it.

FAILURE OF COLLECTIVE BARGAINING IN THE STEEL DISPUTE

Mr. HUMPHREY. Mr. President, I rise to bring to the attention of the Senate again pertinent facts in connection with the pending steel case. Members of the Senate are aware of my deep concern over the failure of collective bargaining in the steel dispute. As chairman of the Senate Subcommittee on Labor and Labor-Management Relations and as a member of the Senate Committee on Labor and Public Welfare, I have actively and conscientiously participated in committee hearings designed to bring the facts out into the open and to bring the dispute to an end.

I have summarized those facts and my own views in a statement which I have prepared for distribution to those who are writing me on the subject. I ask unanimous consent that the statement be printed in the body of the RECORD following the conclusion of these remarks.

There also has been a great deal of debate, Mr. President, on the legal issue of the President's powers. My statement makes clear that, in my judgment, this question can be resolved only by the Supreme Court and not by the Congress. In that connection, therefore, I think it would be helpful to have printed in the body of the RECORD, following my remarks, an article which appeared in the Washington Post of Sunday, May 4, written by Mr. Irving Brant, the distinguished biographer of President James Madison, and entitled "Steel Jam Stirs 1789 Debate on President's Power."

There being no objection, the statement and article were ordered to be printed in the RECORD, as follows:

THE STEEL DISPUTE—STATEMENT BY SENATOR HUMPHREY

Every American is vitally concerned with the steel dispute and the action of the President in seizing the steel mills. Every American should attempt, to the best of his ability, to obtain all of the facts before arriving at conclusions. Unfortunately, the flow of facts to the public has been piecemeal and all too often these facts have been distorted by interest groups which are attempting to sell their side of the story to the public. I think it is fair to say that in this steel case there have been more paid advertisements, more radio broadcasts, more television discussions, than on any other single economic issue.

The Congress of the United States, however, cannot rely on advertisements, speeches, charges, and countercharges, in its effort to objectively analyze the facts and arrive at responsible conclusions. Therefore, immediately following the action of the President in seizing the steel mills, the Senate Labor and Public Welfare Committee, of which I am a member, began extensive and comprehensive hearings on every aspect of this case. We arranged for witnesses to appear and testify. These witnesses included representatives of the Government agencies, such as the Office of Economic Stabilization, the Office of Price Stabilization, the Wage Stabilization Board, and the Secretary of Defense. We also had as witnesses and received the testimony of the leading representatives of the steel companies, the spokesmen for the steelworkers, members of the special panel authorized to make preliminary studies in this case for the Wage Stabilization Board, and representatives of the public. No area of dispute was ignored. The Senate committee, with the assistance of trained and competent staff, has gone into the matter of prices, wages, profits, and production. In light of the charges of some steel executives against the Wage Stabilization Board personnel, we have carefully checked into the background of the Board members. These Board members have been cross-examined with the aid of counsel. Furthermore, the Senate Labor and Public Welfare Committee has carefully examined the entire stabilization policy and sought to determine whether or not this policy was violated by the Wage Stabilization Board recommendations in the steel case. We have reviewed the powers, the functions, the authority and actions of the Wage Stabilization Board.

A complete and exhaustive investigation has been made. These hearings were public. They were covered by radio, television, and the press. The testimony will be made available to the public in the form of printed hearings just as soon as the Government Printing Office can get them printed. We have conducted public business openly and frankly. This statement gives you a brief analysis of some of the hearings. It would require many more pages to give you a detailed analysis. That, however, will be made available in the form of an official Senate committee report supported and documented by the printed testimony and hearings.

The wage and price problems involved in the steel case are infinitely complex. The Wage Stabilization Board, for example, conducted hearings for a period of 2 months in an effort to get the facts. The Office of Price Stabilization held many conferences with steel company officials and studied technical data for a similar period of time. The Senate Committee on Labor and Public Welfare, of which I am a member, and the Subcommittee on Labor and Labor-Management Relations, of which I am chairman, have been holding extensive hearings and received testimony running into hundreds of pages. I urge you as I have urged the Senate repeatedly, to attempt to assemble the facts before forming judgments.

WHAT ABOUT SEIZURE?

The issue as to the constitutionality of the President's seizure of the steel mills is one which cannot be determined by debate, charges and counter charges through the press and on the public platform. This issue can be decided in only one place—the courts. As you know, Judge Pine of the United States District Court, has made a ruling enjoining the President's action. The Circuit Court of Appeals has stayed the action of the United States District Court. The entire case is now before the United States Supreme Court. It is in this Court—and only in this Court—that the issue of constitutionality can be determined. By the time you receive this statement, the Supreme Court may have acted. I merely want my position in this case to be perfectly clear. I have honestly felt that much of the heat and bitter debate over the President's action could do very little to settle this case. The Congress has its responsibilities. Those responsibilities are to investigate, to prepare legislation, and to legislate. The responsibilities of the courts are those over litigation and adjudication. I have told my colleagues in the Congress that if we would utilize our energies in the preparation of much-needed legislation on the whole subject of major labor disputes, we would be performing the service the public expects. I for one have never felt sufficiently trained in constitutional law to make a judgment as to the constitutionality of the President's action. My position has been, and continues to be, that this is a judicial problem, not a legislative one.

The President in seizing the mills acted in what he believed to be the public interest. Needless to say, there are those who violently disagree with the President's judgment. The President did not act, however, without advice and counsel. This was testified to before our committee. Secretary of Defense Lovett stated he had advised the President that any extended stoppage of steel production would expose our Nation to serious danger. He explained that it had been decided to stretch out our mobilization program in the interest of protecting our economy from undue strain. The additional risk involved in the steel stoppage, he said, would be excessive. Chairman Feinsinger of the Wage Stabilization Board stated it quite forcefully when he said that continued steel production is a "matter of life or death."

I have always reserved and exercised the right to question any action taken by the President. However, it must be borne in mind that his office provides him with information, much of it necessarily secret, that simply is not available to the public. It is a mistake to attempt to substitute hunch and surmise for complete information in assessing the danger to which a steel stoppage would subject the Nation. I am convinced that uninterrupted steel production is a vital necessity to our mobilization program and the national security. I have discussed the President's action with the President himself. I did this in light of some of the statements made by the Government attorney at the time the case was before the United States district court. The President assured me, and he asked me to assure you, that he acted upon the best advice of the Defense Department and his legal advisers. We all know that the Constitution is the basic law of the land. It applies to all—Presidents, Congressmen, and citizens. No man is above the law. No agent of government, whether he is the President or a civil-service employee, can go beyond the Constitution. The power of the Executive, as well as the powers of the legislative branch, are limited by the Constitution. In the last analysis, it is the courts which determine the limitations and the powers of the Constitution. As Chief Justice Hughes once said, "The Constitution is what the judges say it is." This eminent jurist was only stating what is an obvious fact—that a basic document such as our Constitution requires interpretation and application in light of existing circumstances and problems. That interpretation, under our Constitution, is a delegated power to the judicial system.

Seizure is not new to American Government. During World War II seizure was used by the President in over 40 cases. In all but three of these cases, the seizure powers of the President were prescribed by statute. In three cases the President acted under what he termed his powers as Commander in Chief and as Chief Executive. Seizure in American Government does not mean seizing the profits, nor does it deny due process of law in terms of protection of property rights. The fifth amendment still applies. President Truman was careful to explain this in his message to the Congress. Some of the propaganda which has gone out over the airways and through the press would lead the people to believe that the President's seizure of the steel mills meant nationalization of these properties. This, of course, is not the case. Seizure is what is commonly referred to in legal terms as a token seizure, and is for but one purpose, to keep the mills producing. Seizure requires that the worker stay on the job. It denies the right to strike. It also nominally deprives owners of full control of their property. I would point out, however, that under the Constitution as interpreted by the courts, a company whose property is seized receives whatever profit is made during seizure. In fact, under the present seizure order and those issued in the past, actual control remains with the owner and seizure is technical only. A vice president of the United States Steel Co. testified

that he knew of no damage his company had suffered since seizure. The Executive order directing seizure provides for the payment of dividends and all other usual practices of private ownership. There is no confiscation.

The Congress is now preparing legislation spelling out seizure powers. This takes time, because seizure is an extreme action. None of us wants to see seizure promiscuously used. If it is used in the national interest, the investor's property rights should be protected; likewise, the worker's rights should be protected equally. It is my judgment that it is the responsibility of the Congress to legislate in this field. I do not like to see seizure as an Executive action. Our Government must be equipped by law to meet these national emergencies. The responsibility for any action as extreme as seizure should be shared both by the Executive and the Congress.

WHY NOT TAFT-HARTLEY?

It has been alleged that the President should have used the Taft-Hartley Act in this case. As a member of the Senate Labor Committee and chairman of its Subcommittee on Labor and Labor-Management Relations, I have been engaged in continuous study of that act since my election to the Senate in 1948.

Title II of the act prescribes a procedure for national emergencies. The first step is the appointment by the President of a board of inquiry which must investigate and report, without recommendations. Such an inquiry requires extended hearings and the preparation of a comprehensive and detailed report. Only after a report is filed may the President direct the Attorney General to institute an injunction proceeding. The court must then make independent findings that the statutory requirements are satisfied and may issue or refuse the injunction. It is a matter of cold fact that it has taken no less than 9 days from the appointment of a board to the filing of a petition for injunction. And it takes at least a day or two, and usually more, for a court to act upon the petition. Even after an injunction is issued the statute limits its duration to a maximum of 80 days.

In this case the contract between the steel companies and steelworkers union expired on December 31, 1951. The President prevailed upon the union to voluntarily postpone a strike for a total of 100 days from the termination of the contract. During the period, hearings were held by the Wage Stabilization Board and some issues actually were settled and withdrawn from the dispute by the parties. In that time, negotiations were resumed which at any time could have resulted in settlement of the dispute. The use of the Taft-Hartley injunction procedure would have disrupted these delicate negotiations. Only at the eleventh hour did it become clear that a settlement would not take place and that the union would no longer postpone its strike deadline as it had done four times.

At this juncture it was a physical impossibility to use the Taft-Hartley procedure in time to forestall a stoppage. An extended interruption in production would have been catastrophic.

Secretary of Defense Lovett testified that it takes from 2 to 3 weeks to reheat steel furnaces. Add to this the minimum of 9 days it would have taken to procure an injunction. The loss of production would have been staggering.

THE WAGE BOARD DECISION

The steel companies in an intense and expensive advertising campaign alleged that the Wage Stabilization Board recommendations will result in a new round of wage increases. There is no evidence to support this charge. The Defense Production Act and the Board's regulations and policies do not allow new claims for increases on the part of other industries and unions based upon these recommendations. The steel decision would allow the steelworkers to catch up with other industries and would not lead. The attached report by the technical staff of the Labor Management Subcommittee explains in detail the wage issues. I hope you will read it.

There were approximately 20 major issues in dispute which involved over 100 detailed problems. In 25 recommendations the Board completely rejected 3 union demands, directed the parties to negotiate on 10 major issues and made affirmative proposals on the remainder. In no instance did the Board recommend the granting of the full union demand. Had the industry members of the Board joined the public members on some issues, the recommendations would have been more favorable to the companies.

FACTS PERTAINING TO WAGES

The steelworkers have had no wage increase since December 1, 1950—a period of over 16 months. Even if the full increase recommended by the Board were put into effect the employees would have lower real wages (less actual purchasing power) than they had in December 1950. To compensate for the cost of living increase since November 15, 1950 to January 1, 1952—15 cents an hour would be required. Taking December 1, 1950 as a base the increase would have to be at least 9 cents an hour.

In determining whether an increase should be recommended and the amount the Board took several factors into account, but assigned no specific amount to each. They were: (1) cost of living; (2) increased productivity; (3) comparisons with other industries; (4) maintenance of traditional proportions of rates within the industry.

As to productivity, no precise estimate can be made for the recommended contract term of 18 months. However, from 1946 to 1950, for which figures are available, the man-hours required to produce a ton of steel was reduced 17 percent. Technological advance can be expected to continue in this industry.

STEEL WAGES COMPARED TO OTHER INDUSTRIES

In considering applications for wage increases, the WSB has normally compared similiar plants in the same area. As an industry member of the Board observed, "You can't compare steel to itself." As a result, the Board considered rates and fringe benefits in other industries and typical large employers. This comparison showed that the following increases have been granted during 1951 by typical large producers in the following industries: automobiles, 17 cents an hour; meat packing, 17.3 cents; rubber, 13 cents; farm machinery, 17 cents; electrical, 15.5 cents; shipbuilding, 17 cents plus; nonferrous metals, 15 to 16 cents. Quite clearly, a steel raise could not be the basis for increases to industries which have already granted these comparable increases.

The Board recommended wage rate increases of 12½ cents an hour for the first 6 months of 1952; an additional 2½ cents for the second 6 months of 1952; and 2½ cents for the first 6 months of 1953. Many major industries have contracts providing for similar or larger increases during that 18-month period.

Similar comparisons showed that the fringe benefits, such as shift differential and holiday pay, of steelworkers were well below those of most major industries. For instance, steelworkers have had no paid holidays. The Board recommended 6, only 5 of which will occur in the remainder of 1952. Only slight improvements in shift differential and vacation pay were suggested. The sole change in vacation benefits would be 3 weeks after 15 years service instead of after 25 years. The improvement recommended would still leave steel employees below the level of most industries. The cost of many of these recommendations might be minimized by rescheduling operations.

HOW MUCH WAGE INCREASE

Without taking these factors of increased production into account, the WSB recommendations would amount to a maximum 26.1 cents per hour in 1953. Over the whole 18-month contract period the average increase per hour would be 20.7 cents an hour. It is interesting to note that the steel companies first made offers after the Board issued its recommendations. Then the companies offered packages amounting to 16 then 20 cents an hour, according to their public statements. It does not appear to me that the Board proposals are excessive in the light of the industry offers.

I think it is significant that a substantial amount of any wage increase would not represent any substantial decrease in profit, but rather would come out of funds otherwise paid out in taxes. This is so because wages are tax deductible as business costs and the tax rates of the companies are high.

THE UNION-SHOP ISSUE

The steel companies waged a large advertising campaign against a union-shop recommendation before the Board issued its report and they have since publicly stated opposition to a union-shop agreement. Of course, union security is a normal subject of collective bargaining and union-shop agreements are common throughout the country. Both the Taft-Hartley Act and the Railway Labor Act permit union-shop agreements. Under the law, an employee may be discharged for loss of membership caused by failure to pay initiation fees or dues uniformly required of all members. The law requires that initiation fees be reasonable. In effect then, the WSB recommendation is directed only to the elimination of "free riders."

It should be recognized that the WSB recommendations are not mandatory although, of course, they are influential. According to the testimony of a vice president of the United States Steel Co., 93 percent of its employees are members of the United Steelworkers of America, CIO. There are union-shop provisions in 45 percent of the contracts of basic steel companies or production and maintenance units. Subsidiaries of United States Steel, Bethlehem Steel, Jones & Laughlin have union-shop contracts with the steelworkers union.

Up to October 1951, the Taft-Hartley Act required a majority of employees in a unit to authorize their union to enter into a union-shop agreement. Elections were conducted by the National Labor Relations Board for this purpose. In the steel industry there were 467,000 employees eligible to vote. Eighty-two percent did vote. Of those voting 83.3 percent voted for the union shop—or 66.9 percent of those eligible. These elections were held for units of 74 employers; only 3 groups of employees voted against the union shop. These facts, not disputed by the companies and based upon official reports, were recited by the WSB in its report.

During World War II, the War Labor Board recommended maintenance-of-membership agreements in most dispute cases. Such agreements provided that employees who were members of the union on a given date or who became members thereafter were required to maintain membership for the duration of the contract. The WLB recommended such agreements in the steel industry and those provisions were incorporated into steel collective bargaining agreements. At that time maintenance of membership represented a greater change in existing conditions than the union shop does today.

It is of interest that the Board recommended the union shop in principle and left the details to be bargained out. The industry members of the Board refused to join the public members in a proposal to return the union-shop issue to the parties with a provision that if agreement were not

reached the Board would reconsider it. The industry members wanted a flat rejection of the union shop. Faced with this impasse the public members of the Board agreed to recommend the union shop.

Let me reiterate, the Board report contains only recommendations and is not compulsory.

WHAT ABOUT PROFITS AND PRICES?

Apparently the real issue in this steel case is price—the price of steel. Again and again in the testimony before our committee it was categorically stated that if the Government would permit a large price increase the wage issue could be settled. Of course this would mean the end of our stabilization program. It has been made a matter of public record that the steel companies asked $12 a ton price increase. The companies have denied ever making such a request. This price subject has been widely discussed in the press and has been used in paid advertisements. The steel companies recently stated in their paid ads that they never did seek a $12 increase per ton. What are the facts?

The Economic Stabilizer, Mr. Roger Putnam, a reputable and honorable citizen, stated under cross examination before the House Banking and Currency Committee that the steel companies did ask for a $12 a ton increase. Mr. Arnall, Director of the Office of Price Stabilization, has stated on the record that the steel companies did ask for $12 a ton. The steel companies recently have retreated from their statements that they did not ask for this increase. It appears to me that there has been far too much misrepresentation here.

Price Administrator Arnall testified that the companies have insisted upon $12 a ton price increase as a condition to settling the dispute upon the terms recommended by the WSB. This is totally unreasonable, unjustified, and would wreck the anti-inflation stabilization program. Here is what the recommended wage increases would actually cost: $2.96 a ton for the first 6 months of 1952; $3.89 for the second 6 months of 1952—an average of $3.43 for the year; after January 1, 1953, $5.05 a ton—an average of $3.97 for the 18 months contract term recommended. These figures include allowance for proportionate increases to salaried workers, in conformity with usual steel company practice.

Assuming equal increases to related workers in subsidiaries in coal, iron, and limestone works the wage increases would cost per ton: $3.49 for the first half of 1952; $4.58 in the second half—an average of $4.03 for 1952; after January 1, 1953, $5.94—an average of $4.67 for the 18-month period.

OPS was generous to the steel companies in figuring these costs. It did not take into account reduced costs due to increased productivity or rescheduling to minimize overtime, shift and holiday premium pay costs.

PRICE ADJUSTMENT

Under existing law the steel companies are entitled to an increase of approximately $3 a ton, whether or not a wage increase is given, under the terms of the so-called Capehart amendment to the Defense Production Act.

OPS regulations permit price increases when profits (measured in terms of return on net worth—a standard very favorable to business) fall below 85 percent of the three best years from 1946–50. Those base years were exceptionally profitable for the steel industry as a whole, the average gross profit was $1,200,000,000. Actual 1951 earnings were $1,918,000,000. Assuming a $6 a ton increase in labor cost (a very generous figure) and the $3 Capehart increase, the steel companies would still show a 28 percent return on stockholders' investment. Put another way, earnings, before taxes, for the base period were $11 a ton and approximately $20 a ton in 1951. Adding $6 to costs and subtracting $3 for a price increase, the decrease would be about $3, although probably less in actual fact. Even after taxes, present profits exceed profits of the pre-Korea period. Steel net profits have been higher in the recent past than at any time since World War I.

PROFITS BEFORE AND AFTER TAXES

It is urged that profits should be measured after rather than before taxes. Yet, the companies do not contend that wages should be so computed. You and I as taxpayers know that our compensation is paid to us without regard to the taxes we pay. Our system is that of progressive taxation. Broadly speaking the tax structure is graduated so as to take larger proportionate parts from large incomes than from small incomes. This is true of personal income taxes. Corporate taxes are less sharply graduated and far lower than individual rates for equal incomes, except in the excess profits tax brackets. Indeed, because of excess profits tax rates, the $12 a ton increase sought by the steel companies would result in an actual income of about $3.50. On the other hand, a substantial portion of any wage increase would come out of funds otherwise to be paid out as taxes.

WAGE AND PRICE RELATIONS

The steel companies have argued that all past wage increases have resulted in equal increases in material costs, so that the Government-estimated maximum of $6 would be $12 a ton. The OPS rejects this argument for two reasons. One, it has a policy of not granting present increases on predictions of future costs that are not fully established. Secondly, despite a substantial wage increase in mid-1948 material costs in steel remained constant from the beginning of 1948 until the outbreak of hostilities in Korea. In addition, since December 1950 there has been almost no net change in the cost of purchased services and materials in the industry. Price Administrator Arnall testified that if the cost of steel production does increase in the future the steel companies may file applications for relief on the same basis as other companies have in the past.

On the basis of the record, I am convinced that OPS standards are equitable and indeed generous to business. It is clear that even if the full recommendations of the WSB were put into effect the industry would not merit a price increase approaching the figure it requests. Such an increase would be a body blow to our stabilization program by pyramiding costs of all products, military and civilian, using steel. Inflation could be the means of swamping our economy to an extent that Soviet aggression would have a free hand throughout the world.

The figures on production, profits, and prices that I have used in this statement are a matter of public record. They can be verified by the records of the Federal Trade Commission, the Iron and Steel Institute, and the Office of Price Stabilization. I have tried to be factual because facts have been very short in the public discussion of this steel case. Unfortunately, not only have the facts been distorted, but there have been unfounded and inexcusable attacks upon the integrity, the character, the background, and the experience of the public members of the Wage Stabilization Board. These members are men of honor. They are experienced in the field of labor-management relations. Each and every public member in the past years has had his services utilized by industry and labor as impartial arbitrators. Each member is acknowledged as an expert by those who are experienced in the field of labor-management relations. If there is any one charge which the representatives of the steel industry have made which weakens their case, it is the prejudiced statements referring to the WSB public members. Chairman Feinsinger is well known in the Minnesota area. For years he has served as the impartial arbitrator for the Honeywell Co. Never before have he or his associates been accused of political dealing or being union stooges. These charges on the part of Mr. Randall of Inland Steel in his television broadcast are most unfortunate.

CONCLUSION

Panic can be more harmful than the problem which occasions it. I trust that when the partisan clamor has subsided this dispute will have been settled in an orderly fashion. This desirable end will be achieved more readily in an atmosphere of calm and informed deliberation. The emergency which we are in is grave and requires our best and most sober efforts.

STEEL JAM STIRS 1789 DEBATE ON PRESIDENT'S POWER

(By Irving Brant)

Questions that come up suddenly and dramatically always seem new. So it is with the inherent powers of the President. The phrase comes freshly before the public, but the issue is as old as the Constitution.

The Supreme Court can decide whether the President has power to seize the steel industry. It cannot cure, and can only slightly curb or alter, the inherent conflict between President and Congress over the powers of government.

Again and again, from 1789 down to the present year, American Presidents have undertaken to act independently of Congress, in matters which the latter claimed to be within its sphere. Again and again Congress has undertaken to impose its will on the Executive, in matters which the President has regarded as in his special province. The situation is partly accidental, stemming from inability to read the future, but it is an accident which is the offshoot of design.

President, Congress, and the courts, under our Constitution, are distinct branches of government. Basically independent, they are woven together to check each other, not to create a government which functions as a unit. Whether this system is good or bad, it produces two inescapable results—conflicts between the branches and a reduced power of action by the Government as a whole.

LEGISLATIVE DESPOTS

The framers of the Constitution were trying to guard against tyranny—both the tyranny they had experienced and that which they had read about in books. In their own experience many of them knew two kinds—the tyranny of the unchecked monarch ruling by royal prerogative, and that of the unchecked legislative assembly.

What they saw in Europe and felt under George III warned them against the unchecked executive. Many lived in American States whose governors were creatures of legislatures swayed by reckless majorities. They had read of ancient tyrannical republics, with all power concentrated in the legislative branch, and were more afraid of that than of an uncrowned monarch. Jefferson, though he did not help draw up the Constitution, wrote in the spirit of its framers when he protested against the rule of "173 despots" in the Virginia Legislature.

Said he, in his Notes on Virginia, published in 1785:

"All the powers of government—legislative, executive, and judiciary—result to the legislative body. * * * [This] is precisely the definition of despotic government. * * * An elective despotism was not the government we fought for."

Madison, the most influential man in the convention of 1787, felt the same concern, but believed that both of these aspiring

branches were adequately checked in the new Constitution. In a government wherein a hereditary monarch held extensive prerogatives, he wrote in the Federalist, "the executive department is very justly regarded as the source of danger. * * * But in a representative republic where the executive magistracy is carefully limited both in the extent and duration of its power * * * it is against the enterprising ambition of [the legislative] department that the people ought to indulge all their jealousy and exhaust all their precautions."

He gave his reasons for fear of the legislative branch rather than the executive branch. Its supposed influence over the people would give it "an intrepid confidence in its own strength." Its constitutional powers "being at once more extensive and less susceptible of precise limits," it could mask its encroachments "under complicated and indirect measures."

RELENTLESS ENCROACHMENT

Applying this to later American history, it is clear that Madison was basically right. He was wrong in expecting Congress to have more influence over the people. He was wrong in thinking that the executive power had more precise limits. But it has been proved over and over again that except for the safeguards set up in the Constitution, the Executive power would be reduced to nothing under the relentless pressure of legislative encroachment.

Madison referred to the Executive as "carefully limited both in the extent and duration of its power." That, of course, is enough to prove the intention of limiting it. Among the limitations expressed in the Constitution are:

1. The fixing of the President's term at 4 years, making him dependent on the people after a short interval.

2. The sharing of the appointive power with the Senate.

3. The sharing of the treaty power with the Senate.

4. The placing of the power to declare war in Congress.

5. The power of Congress to override a veto by a two-thirds vote.

6. The power of Congress to remove the President by impeachment for high crimes and misdemeanors.

That leaves some important questions unanswered. The Constitution says: "The executive power shall be vested in a President of the United States of America." What is the executive power?

1. Does it cover everything historically associated with the executive power of governments in general, minus the exceptions set forth in the Constitution?

2. Going to the other extreme, does the entire executive power consist of the specific powers conferred on the President in the same article? It is said there that he shall be Commander in Chief of the military forces, he shall take care that the laws be faithfully executed, and shall have power (under certain limitations) to make treaties, grant pardons, appoint officers, send and receive Ambassadors, convene Congress, give advice on legislation and require written opinions from the heads of departments. Does he have these powers only? Or—

3. As a final alternative, has the Executive these express powers plus others implied in them?

T. R. WENT FURTHEST

In practice all Presidents have gone beyond their expressly stated powers, but there have been sharp divisions as to how far beyond them they could go. One group, typified by President Taft, believed that it was necessary to ground all executive action either in the powers and duties actually specified in the Constitution, or in implications of power drawn from them.

Theodore Roosevelt went furthest in challenging this view. When the doing of a thing is imperative, he wrote in his autobiography, the Executive has no need to find some specific authorization to do it. He regarded the President "as subject only to the people, and, under the Constitution, bound to serve the people affirmatively in cases where the Constitution does not explicity forbid him to render the service."

Lincoln, without going that far in general, went farther in particular. He believed that, faced with a grave enough emergency, the President had both the power and duty to act contrary to the letter of the Constitution in order to fulfill its fundamental purpose of holding the Nation together.

All Presidents have acted along one of these three lines, or somewhere between them, but the conflict between the two great branches of Government has been more extensive. Nearly always it has been entangled with the constitutional power and duty of the President to propose legislation. Strong Presidents, believing themselves stewards of the people, present and push strong legislative programs. Congress either cooperates or resists—usually doing the one thing first and then the other—and the President when frustrated turns to his own executive powers.

THE STRONG AND WEAK

Taking a look at the line of Presidents before Truman, we find some of them falling into groups like these:

1. Those who exerted power strongly and successfully—Washington, Jefferson, Jackson, Lincoln, Wilson, the two Roosevelts.

2. Those who tried strongly to exert power but were frustrated—J. Q. Adams, Tyler, Johnson, Hayes.

3. Those who made no effort—Buchanan, Grant, Harding, Coolidge.

I have not classified Madison because too much documentation would be required to correct the erroneous verdicts upon his work as President. But combining his own executive actions with those which he sponsored for President Washington, he went farther than any other man of his day in laying the groundwork for the expansion of executive power by Lincoln, Wilson and the Roosevelts.

Among the Presidents in the first category, Theodore Roosevelt was notable as one who proved totally unable to put a legislative program through Congress but went further than any other in the peacetime use of executive power alone. Of the four Presidents who were conspicuous for their affirmative influence over legislation—Jefferson, Jackson, Wilson, and Franklin Roosevelt—all had been reduced to impotence in that field before they ended their various periods of service. Only in the purely executive field did they retain their strength.

All through our history, strong Presidents have expanded the executive power. Weak or unassertive Presidents have let Congress dominate them. Congresses ineffective in legislation have created a vacuum into which new executive power has flowed. At the beginning of each new cycle, executive power starts at a higher level, while Congress shows less capacity for performing its own duties and a greater determination to restrain the other branch.

THE POWER OF REMOVAL

The Government set up by the Constitution was only 6 weeks old, in 1789, when it came smack up against a question that is still debated in some details. Who has the removal power? Madison asked and answered the question, in Congress, before there were any officers to remove. Writing a bill to create the Department of State, he so worded it as to imply that the President alone had the power to remove men from office. Instantly there was a protest. The Senate had a share in appointing officers; therefore, arguing by analogy, it must have a share in removing them.

Madison's answer set the stage for much of the later growth of the executive power. He read the words of the Constitution. "The executive power shall be vested in a President of the United States of America." Appointment and removal, he said, were both part of the executive power. Senate confirmation of appointees was an exception from the general grant of this power. Aside from that, the executive power remained complete and included the power of removal.

The House voted 2 to 1 with Madison. The Senate agreed. This was the most far-reaching decision ever made on the Executive power. First, it established the President's power of removal—something the Senate never would have agreed to had the issue been postponed till a later period. Beyond that, it established the principle that the Executive power is not confined to the powers and duties of the President which are specifically set forth in the Constitution. Nothing is said in it about removals from office. The President has the power of removal because it is part of the Executive power which is vested in him. It follows, under Madison's doctrine, that anything which is in the Executive power, as that is known historically, can be done by the President unless the Constitution prevents it by some specific limitation.

A WASHINGTON PRECEDENT

When President Wilson made Colonel House his personal emissary in Europe and F. D. R. sent Harry Hopkins on more formal missions without the sanction of Congress, they were resorting to a new method of getting around the Senate. George Washington started this when he sent David Humphreys across the Atlantic in 1790, at public expense, on a mission known only to Jefferson, Hamilton, Madison, and Congressman Brown, of Kentucky.

On the expectation of war between England and Spain over the "Nootka incident," Humphrey's job was to induce Spain to open the Mississippi to American navigation by threatening an alliance with England and to keep Britain out of Florida by threatening an alliance with Spain. There was no war, so the mission failed, but two precedents were set: The President could send diplomats abroad without consulting the Senate, paying them out of his contingent fund. He could put secret pressure on foreign governments by threatening military action which only Congress could make effectual.

A more complicated step of that sort was taken by President John Adams. During the quasi-war with France, he appointed and the Senate confirmed Dr. Edward Stevens as United States consul to San Domingo where Toussaint L'Ouverture was in revolution against the French Government. In a secret oral contract, Adams gave Stevens additional nonconsular duties (virtually as a minister to Toussaint) and agreed to pay additional expenses caused by these duties. Stevens, acting as Toussaint's adviser, helped to draft a secret treaty (informal but binding) between him and Britain, and committed his own Government to respect it. He came back to the United States after Jefferson became President and presented his accounts.

Secretary of the Treasury Gallatin saw no power to pay him for nonconsular work. The diplomatic fund, he pointed out, was appropriated to persons "commissioned by the President." That meant persons confirmed by the Senate. Stevens should ask Congress for relief.

Secretary of State Madison replied that the word "commissioned" covered any per-

son authorized by the President to serve in foreign parts. A stricter ruling "would narrow the authority of the Executive more than would consist with the public interest, with the probable intention of the Legislature, or with the uniform course of practice."

Jefferson accepted Madison's view. Thus it was confirmed not only that personal Ambassadors could be sent abroad by the President, but that they could be paid from the Public Treasury on the evidence of an unwritten agreement with a President no longer in office.

A RECURRING SITUATION

The most dramatic assertion of executive power by President Washington came in his neutrality proclamation of 1795, which both Madison and Jefferson regarded as unconstitutional. Hamilton took a contrary view, and applied the exact argument Madison had used in 1790. The President, he said, had this power because the executive power was vested in him and this was part of it.

Madison did not deviate from his former position, but contended that the proclamation violated a specific provision of the Constitution—that which gave Congress the power to declare war. The issue was not whether Washington had the power to proclaim that the country was neutral in a European war, but whether he could prejudge a decision by Congress on the requirements of the 1778 treaty of alliance between the United States and France. Madison argued that the power to declare war included the power to decide whether war ought to be declared. The proclamation, he thought, infringed this power.

Whether that was true or not, the incident high lighted a fact of recurring significance. The proclamation was issued, and that was that. Congress could overrule it by declaring war, which it had no intention of doing. Apart from that, the proclamation would continue to stand as the official policy of the country, regardless of its constitutionality.

Jefferson's purchase of Louisiana in 1803 has often been cited either as an action taken under inherent executive power, or as a fait accompli presented to Congress for acceptance without prior consultation with the legislative branch. It was neither of these. Congress not only made a cash-in-advance appropriation to aid the negotiation, but completed it by legislation and treaty ratification. Not only that, the lawmakers offered the President what he did not want—80,000 troops and discretionary authority to seize the country by military force.

MILITARY INITIATIVE

Jefferson lost his power over Congress and Madison inherited a party majority shot through with faction. Executive power, however, continued to rise through the Presidencies of both men. To cope with attacks on American ships during the Napoleonic Wars, Congress gave President Madison discretionary power to suspend a nonintercourse law. He draw cries of protest from Federalists by holding that this implied the power to restore the law after he had suspended it.

President Adams produced a quasi-war with France by using American warships to protect merchant vessels.

President Jefferson sent American frigates to the Mediterranean, to guard American shipping from the Barbary pirate nations, not knowing that Tripoli had declared war on the United States.

Madison, before he became President placed a narrow interpretation on the military powers of the Executive. Congress, he remarked in 1803, could not delegate its powers to declare war; it could not give the President discretionary power to march an army into New Orleans, held by Spain. But in 1810, Madison marched an army from New Orleans into west Florida, held by Spain, without any act of Congress at all. He described it as a police action, to maintain order, but the purpose was annexation, and only the prostration of Spain beneath the armies of Napoleon and Wellington prevented armed resistance. Madison's action furnished a precedent for President Wilson's military incursions into Mexico, which in turn gave a sanction to President Truman's intervention in Korea.

The Monroe Doctrine was an expression of presidential leadership rather than executive power. It was indeed the work of four Presidents—one in office, two retired and one yet to be—for Monore acted on the advice of Jefferson, Madison and John Quincy Adams. But the mere promulgation of the doctrine led to innumerable exertions of executive authority—by Cleveland in keeping Britain out of Venezuela, by Theodore Roosevelt in forestalling European intervention in Santo Domingo, by Wilson in the occupation of Haiti.

In raising and paying troops and in suspending the right of habeas corpus, Lincoln violated the Constitution. In issuing his Emancipation Proclamation, he expanded his powers as Commander in Chief beyond the military field, but struck a terrific blow at the military power of the enemy. Extreme as it was, this was a well-warranted constitutional action. Had he gone further and abolished slavery in States that did not secede, it would have been an indefensible usurpation of power.

Just before and after the Civil War, executive power was almost nonexistent, but for totally different reasons. In the 1850's, weak Presidents and a divided majority party reduced the general strength of Government to a suicidal low. After the Civil War, a Congress driven by sectional fanatics—the northern radicals—overwhelmed the Executive with a fury which Lincoln himself might not have been able to resist, had the assassin's bullet spared him.

We often talk in America about dictatorships, thinking of the danger that some strong President will seize absolute control. Few people realize that we had a virtual dictatorship by Congress during reconstruction days, with lasting and appalling damage inflicted upon the Nation.

It was not until Theodore Roosevelt entered the White House that the executive branch regained what it lost after Lincoln. His personality made the change. Unable to influence a Congress controlled by conservative business interests, he not only resorted to his own executive power but tried to define it as a system. He called himself "the steward of the people." He claimed that he could do anything for the public welfare which the Constitution did not forbid.

T. R. "took Panama" by fomenting a revolution in Colombia, thus making it possible to build the Panama Canal. He coerced the coal barons into settling a strike by threatening to send troops into the coal fields—though what they would have done there was left a little vague. When the Senate rejected his treaty placing American customs houses in Santo Domingo, he set them up by executive agreement with that country and kept them there until the Senate ratified the agreement.

IMPACT OF CHANGE

Executive expansion under Wilson and Franklin Roosevelt followed a different pattern. The United States was projected into world affairs during two world wars during their presidencies. At the same time the national economy grew so complicated that vast new responsibilities were thrust upon the Federal Government. Faced with situations too complex for fixed legal patterns, Congress was compelled to make huge delegations of power.

The power given to Wilson over industrial production, the powers given to Franklin Roosevelt in the 100 days of 1933—these represented the impact of a changing world more than they did the strength of the men, strong though they were, who took the lead in bringing this about. The Supreme Court's resistance to the NRA and the AAA, to the Guffey Coal Act, etc., was not at bottom a protest either against the powers of Congress or the President. It was a last-ditch struggle against economic and social change. The failure of it let governmental powers sweep onward in both fields.

We are now at a point in which the United States is more involved in world affairs than ever before, and the national economy is more closely tied to the Federal Government. This produces a greater need for legislative responsibility in Congress, and at the same time compels a wider use of Executive power. Against this are set up two frustrations:

Congress is unwilling to meet its legislative responsibilities. This throws an undue burden onto the Executive under circumstances in which action is difficult. President Truman put the United States into war in Korea, but called it a police action. He cannot base his Executive actions on the war power without changing the label, and cannot change the label without stamping his prior action as unconstitutional. So when faced with the need for action which might be defended as within his war powers, he acts, but uses the language of Andrew Jackson and Theodore Roosevelt to justify his action. That leaves the crucial question still undecided—whether the action to which it is applied is executive or legislative in nature.

To sum up:

American history demonstrates beyond dispute that, under the leadership of strong Presidents and the pressure of events, the Executive power will be exerted to its full extent. But nobody has yet said what is and what is not Executive power.

INCOME-TAX PAYMENTS BY HARRY GROSS

Mr. WILLIAMS. Mr. President, during the past several days the newspapers have been featuring the testimony of the racketeer Harry Gross, one-time head of a multi-million-dollar-a-year betting ring in New York City.

Last year Mr. Gross was sentenced to 12 years imprisonment for contempt. It was his refusal to testify at last year's criminal trial of 17 accused policemen that wrecked Brooklyn's biggest graft case.

Apparently, the intervening months in prison have loosened Mr. Gross' tongue since he is now revealing to the American public for the first time the amazing story of his 10-year career as a big-time bookmaker.

On May 8, 1952, the New York Herald Tribune featured their story of his amazing revelation with this opening line:

Harry Gross named three of former Mayor William O'Dwyer's appointees and 115 police officers as members of his $1,000,000-a-year graft payroll.

This same article quotes Mr. Gross as claiming to have contributed $20,000 to the Democratic mayoralty campaign fund during two recent elections.

I shall not delay the Senate with a further review of Mr. Gross' shocking testimony, but will incorporate in the RECORD later the article from the Herald Tribune.

TRANSMITTAL SLIP

13 May 1952
(Date)

TO: DDCI

BUILDING: Admin. | ROOM NO.:

REMARKS:

Noted by D/DCI
5/13/52

FROM: LEGISLATIVE COUNSEL

BUILDING: South | ROOM NO.: 302 | EXTENSION:

FORM NO. SEP 1946 36-8

16—65208-1 GPO

STAT

E R :

Please file —
this is John Foster Dulles'
speech of last night.

Lee